

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Impulse Telecom, LLC dba Impulse Advanced Communications (U7164C) to expand its certificate of public convenience and necessity to provide: (1) full facilities-based competitive local exchange service throughout the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., and (ii) full facilities-based interexchange service statewide.

Application 12-08-012  
(Filed August 7, 2012)

**DECISION GRANTING A MODIFICATION OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FULL FACILITIES-BASED AND RESOLD LOCAL EXCHANGE AND INTEREXCHANGE SERVICE****Summary**

Impulse Telecom, LLC dba Impulse Advanced Communications (Applicant) seeks modification of its existing certificate of public convenience and necessity under Public Utilities Code Section 1001 to obtain authority to provide full facilities-based local exchange and interexchange telecommunications services in California. We grant the application, subject to the requirements and conditions stated below.

We also authorize Applicant to utilize the procedure for 21-day expedited environmental review by Commission Energy Division Staff, if Applicant wishes to engage in full facilities-based construction activities that involve potential

statutory or categorical exemptions from the California Environmental Quality Act (CEQA), as described in the application.

This proceeding is closed.

## **1. Background**

In 2009, Applicant applied for and was granted a certificate of public convenience and necessity (CPCN) authorizing the company to provide limited facilities-based and resold local exchange and interexchange telecommunication services in this state.<sup>1</sup> D.09-12-024 sets forth the terms and conditions of Applicant's existing CPCN. Applicant now requests that the Commission expand its existing CPCN to include full facilities-based authority and permit Applicant to use an expedited CEQA review process for future full facilities-based construction projects that Applicant claims are exempt from CEQA and that do not exceed five miles in length.

Applicant's legal name is Impulse Telecom, LLC. Applicant is a California limited liability company with a principal place of business located at 5383 Hollister Avenue, Suite 240, Santa Barbara, California.

Applicant has met the Commission's financial requirements for the issuance of a full facilities-based CPCN and has filed documentation which shows that its management has sufficient telecommunications experience and expertise to qualify Applicant for a full facilities-based CPCN.

We address the California Environmental Quality Act (CEQA) issues relevant to this application below.

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<sup>1</sup> See *Decision (D.) 09-12-024*.

## 2. Environmental (CEQA) Review

CEQA (Public Resources Code Sections 21000 *et seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations (hereafter CEQA Guidelines), Section 15002.)

CEQA requires the Commission to act as the designated lead agency to assess the potential environmental impact of a project so that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. In Commission Rules of Practice and Procedure Rule 2.4(b), the Commission recognizes that certain classes of projects are exempt from CEQA. In cases where such exemptions apply, we are not required to issue an Environmental Impact Report or Negative Declaration.

At this time, Applicant states that it does not know the specific projects that it will undertake in the future, because Applicant does not yet know the specific locations of customers that it may serve. Applicant therefore requests approval to utilize a procedure for expedited review of Applicant’s projects by Commission Energy Division Staff ( ED Staff) once Applicant is aware of a specific site(s) on which it plans construction. The Commission has previously approved an expedited CEQA review process for full facilities-based projects where it appears that the anticipated future projects may be categorically exempt.

According to the application, Applicant intends to install its facilities, such as fiber optic cable and related equipment, primarily in existing conduits and other existing buildings and infrastructure. However, Applicant states that in

some cases, it may need to undertake outside plant construction activities, such as trenching for the installation of underground conduit and the installation of new utility poles, equipment shelters, or other above-ground support structures, in order to serve customers.

Applicant anticipates that this construction will generally be small in scale and will consist of construction of short-conduit extensions or stubs and installation of a limited number of poles or other above-ground facilities. Further, this construction will normally occur in existing roadways or other previously-disturbed or developed rights- of-way.

Applicant contends that these outside plant construction activities may fall within categorical exemptions to CEQA, including but not limited to State CEQA Guidelines 15301 (construction projects involving existing facilities); State CEQA Guidelines Section 15302 (replacement or reconstruction of certain existing structures and facilities); and State CEQA Guidelines Section 15303 (new construction or conversion of small structures), as well as other exemptions.

We have previously granted other carriers authority to rely upon the expedited 21-day process for CEQA review by ED Staff to determine if proposed construction projects are exempt from CEQA.<sup>2</sup> Applicant's proposed construction activities, as described in the application, are limited and may, in some circumstances, fall within CEQA exemptions.

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<sup>2</sup> See, e.g., ClearLinx Network Corporation (Decision) (D.) 06-04-063), New Path Networks, LLC (D.06-04-030), CA-CLEC LLC (D.06-04-067), Sunesys, Inc. (D.06-06-047), NextG Networks of California, Inc. (D.07-04-045), Broadband Associates International (D.07-08-026), Trillion Partners, Inc. (D.07-11-028), Freedom Telecommunications, Inc. (D.09-11-021), Central Valley Telecom, LLC (D.11-07-019).

By this decision, we make the expedited 21-day process for CEQA review by ED Staff available to Applicant, for full facilities-based projects, as described in the application, which Applicant claims are categorically or statutorily exempt from CEQA. The Commission, as Lead Agency, must evaluate the availability of any claimed exemptions and direct any additional CEQA review that may be necessary.

If Applicant wishes to engage in full facilities-based construction activities and believes that these activities are exempt from CEQA, Applicant shall first apply to the Commission ED Staff for a determination of exemption from CEQA using the following procedure:

- A. Required Information From Applicant. Applicant will provide the Commission Energy Division with:
1. A detailed description of the proposed project, including:
    - a) Customer(s) to be served;
    - b) The precise location of the proposed construction project; and
    - c) Regional and local site maps.
  2. A description of the environmental setting, including at a minimum:
    - a) Cultural, historical, and paleontological resources;
    - b) Biological resources; and
    - c) Current land use and zoning.
  3. A construction work plan, including:
    - a) Commission Preconstruction Survey Checklist – Archaeological Resources;
    - b) Commission Preconstruction Survey Checklist – Biological Resources;

- c) A detailed schedule of construction activities, including site restoration activities;
  - d) A description of construction/installation techniques;
  - e) A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
  - f) A list of permits required for the proposed project.
- 4. A statement of the CEQA exemption(s) claimed to apply to the proposed project.
  - 5. Documentation and evidence sufficient to support a finding that the claimed CEQA exemption(s) apply to the project.
  - 6. A proof of service showing that Applicant has served a copy of the above information on the city and county in which the project, if approved, will be constructed.
- B. Review by Commission Energy Division. The Commission Energy Division will then review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review no later than 21 days after the date on which Applicant's submittal is complete.
- C. Approval of Claimed CEQA Exemption(s)/Notice to Proceed. If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- D. Disapproval of Claimed CEQA Exemption(s). If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, ED Staff will issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or shall file a formal application with the Commission seeking the requisite approval and undergo full CEQA review, before commencing any full facilities-based construction activities.

Applicant shall not engage in any construction activity relating to a pending CEQA exemption request before receiving an NTP from ED Staff. Applicant may follow the above procedures unless and until the Commission adopts different requirements for CEQA review, which apply to Applicant, in a subsequent proceeding.

We grant Applicant authorization to utilize the above procedure only for certain projects as described in the application, that do not exceed five miles in length and will be constructed in existing public rights-of-way and utility easements in developed urban or suburban areas. Other types of full facilities-based construction may require a different level of CEQA review. Therefore, if Applicant wishes to pursue full facilities-based construction projects other than as described in the application, Applicant shall file for additional authority from the Commission and shall undergo any required CEQA review before commencing construction.

### **3. Conclusion**

We conclude that the application conforms to our rules for authority to provide full facilities-based local exchange and interexchange telecommunications services, and that it is appropriate for Applicant to utilize the 21-day process for expedited CEQA review by ED Staff of potentially CEQA-exempt construction projects as described in the application.

Accordingly, we approve the application subject to the terms and conditions set forth herein.

#### **4. Request to File Under Seal**

Applicant requests that confidential financial information filed with this application be filed under seal. We have granted similar requests in the past, and we grant Applicant's request here.

#### **5. Categorization and Need for Hearing**

In Resolution ALJ 176-3299 dated August 23, 2012, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been filed. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

#### **6. Comments on Proposed Decision**

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

#### **7. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. Applicant seeks expansion of its existing CPCN to obtain authorization to provide full facilities-based local exchange and interexchange services.
2. There is no opposition to granting this Application.
3. The Commission is the Lead Agency for this project under CEQA.



4. By this application, Applicant is not seeking authorization for any specific construction project.

5. Applicant proposes to utilize the Commission's 21-day process for expedited environmental review by ED Staff for its full facilities-based projects that are potentially exempt from CEQA.

6. Applicant anticipates that its full facilities-based construction activities will be small in scale and may include trenching for the installation of underground conduit and the installation of new utility poles, equipment shelters, or other above-ground support structures.

7. Applicant states that its full facilities-based construction activities will normally take place in existing roadways or other previously-disturbed or developed rights-of-ways. Applicant states that its full facilities-based construction activities may fall within categorical exemptions to CEQA, including but not limited to State CEQA Guidelines 15301 (construction projects involving existing facilities); State CEQA Guidelines Section 15302 (replacement or reconstruction of certain existing structures and facilities); and State CEQA Guidelines Section 15303 (new construction or conversion of small structures), as well as other exemptions.

8. The Commission has previously authorized other carriers to utilize the 21-day expedited process for environmental review by ED Staff for potentially CEQA-exempt construction projects.

9. Applicant's proposed facilities-based project activities, as described in the application, are of a limited nature and may, in some circumstances, fall within statutory or categorical exemptions to CEQA.

10. Applicant's utilization of the expedited 21-day process for environmental review by ED Staff of proposed construction projects that are potentially exempt

from CEQA, as described in the application, is adequate for the Commission's purposes as the CEQA Lead Agency and is in the public interest.

11. Applicant has filed no changes to its existing tariffs which were previously approved in D.09-12-024, which granted Applicant a CPCN authorizing the company to provide limited facilities-based and resold local exchange and interexchange services in this state.

12. Applicant has met the requirements for issuance of a CPCN authorizing the provision of full facilities-based local exchange and interexchange services in this state.

### **Conclusions of Law**

1. Except for the requirement for additional environmental (CEQA) review, the requirements for a full facilities-based CPCN are generally the same as for a limited facilities-based CPCN.

2. Applicant's description of its future construction projects and proposed utilization of the 21-day expedited process for environmental review by ED Staff of potentially CEQA-exempt projects, as described in the application, meet the requirements of CEQA, based on the specific facts of this case.

3. The 21-day process for expedited environmental review by ED Staff of potentially CEQA-exempt projects is appropriate for certain construction activities as described in the application. If Applicant proposes construction activities other than as described in the application, a different level of CEQA review may be required.

4. Applicant should be granted a full facilities-based CPCN, subject to the requirement that Applicant comply with the expedited 21-day process for the ED Staff review of potentially CEQA-exempt projects, as described in the

application, and shall apply for Commission approval and undergo any required CEQA review for other full facilities-based projects.

5. Public convenience and necessity require Applicant's full facilities-based local exchange and interexchange services to be offered to the public subject to the terms and conditions set forth herein.

6. The application should be approved.

7. Upon approval of the application, Applicant shall remain subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

8. Applicant should remain subject to the requirements of D. 09-12-024, its licensing decision.

9. Applicant's request to file its financial information under seal should be granted, to the extent set forth below.

10. Based on the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. The certificate of public convenience and necessity currently held by Impulse Telecom LLC, dba Impulse Advanced Communications (Applicant) (U7164C), which authorized Applicant to provide limited facilities-based and resold local exchange and interexchange services in this state, is modified to authorize Applicant to provide full facilities-based local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., Citizens Telecommunications Company of California, Inc., and SureWest

Communications, and interexchange services statewide, subject to the terms and conditions set forth below.

2. Impulse Telecom LLC, dba Impulse Advanced Communications, is authorized to construct the facilities addressed in this decision only upon receiving prior Commission approval and undergoing any required environmental review.

3. The staff of the Commission's Energy Division is authorized to review, process, and act upon requests by Impulse Telecom LLC, dba Impulse Advanced Communications, for a determination that its full facilities-based construction activities, as described in the application, are exempt from the requirements of the California Environmental Quality Act.

4. If Impulse Telecom LLC, dba Impulse Advanced Communications (Applicant) wishes to engage in full facilities-based construction activities as described in the application and believes that these activities are exempt from the California Environmental Quality Act (CEQA), Applicant shall first apply to the Commission's Energy Division staff for a determination of exemption from CEQA using the following procedure:

A. Required Information From Applicant. Applicant shall provide the Commission Energy Division with:

- 1) A detailed description of the proposed project, including:
  - a) Customer(s) to be served;
  - b) The precise location of the proposed construction project; and
  - c) Regional and local site maps.
- 2) A description of the environmental setting, including at a minimum:
  - a) Cultural, historical, and paleontological resources;

- b) Biological resources; and
- c) Current land use and zoning.
- 3) A construction work plan, including:
  - a) Commission Preconstruction Survey Checklist – Archaeological Resources;
  - b) Commission Preconstruction Survey Checklist – Biological Resources;
  - c) A detailed schedule of construction activities, including site restoration activities;
  - d) A description of construction/installation techniques;
  - e) A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
  - f) A list of permits required for the proposed project.
- 4) A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
- 5) Documentation and evidence sufficient to support a finding that the claimed CEQA exemption(s) apply to the project.
- 6) A proof of service showing that Applicant has served a copy of the above information on the city and county in which the project, if approved, will be constructed.
- B. Review by Commission Energy Division. The Commission Energy Division shall review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review no later than 21 days after the date on which Applicant's submittal is complete.
- C. Approval of Claimed CEQA Exemption(s)/Notice to Proceed. If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff shall prepare a Notice to Proceed (NTP) and file a Notice of

Exemption with the State Clearinghouse, Office of Planning and Research.

- D. Disapproval of Claimed CEQA Exemption(s). If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, Energy Division Staff shall issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

If the Commission's Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either redesign the specific project and facilities and then reapply for a finding of exemption from CEQA, or shall file a formal application with the Commission seeking the requisite approval and undergo full CEQA review, before commencing any full facilities-based construction activities.

5. The procedure stated in Ordering Paragraph 4 above for expedited 21-day environmental review by Commission's Energy Division staff of potentially California Environmental Quality Act-exempt construction projects applies only to certain construction activities as described in Application 12-08-012 that do not exceed five miles in length. If Impulse Telecom LLC, dba Impulse Advanced Communications (Applicant) wishes to perform other full facilities-based construction activities, Applicant shall first apply for Commission authorization and undergo any required environmental review before commencing construction.

6. Impulse Telecom LLC, dba Impulse Advanced Communications, (Applicant) shall not engage in any full facilities-based construction activity that Applicant believes is exempt from the California Environmental Quality Act, before receiving a Notice to Proceed from the Commission's Energy Division, pursuant to the procedure stated in Ordering Paragraph 4 above.

7. Impulse Telecom LLC, dba Impulse Advanced Communications, (Applicant) remains subject to the requirements of Decision 09-12-024, which granted Applicant a certificate of public convenience and necessity authorizing the company to provide limited facilities-based and resold local exchange services and interexchange services in California, including but not limited to all tariff, surcharge and reporting requirements adopted therein, and must adhere to all Commission rules, decisions, General Orders, and Statutes including Public Utilities Code § 451 to take all actions “ . . . necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

8. Utility’s motion to file under seal is granted. The information will remain under seal for a period of two years after the date of this order. During this two year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by Utility or as ordered by a court of competent jurisdiction. If Utility believes that it is necessary for this information to remain under seal for longer than two years, Utility may file a new motion at least 30 days before the expiration of this limited protective order.

9. Application 12-08-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.